IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 369 of 1991

For Approval and Signature:

Hon'ble MR.JUSTICE M.H.KADRI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

STATE OF GUJARAT

Versus

PAHADSING DALPAT VASAVA

Appearance:

Mr. K.P. Raval, APP for the appellant.

NOTICE SERVED for Respondent No. 1

CORAM : MR.JUSTICE M.H.KADRI

Date of decision: 15/11/2000

ORAL JUDGEMENT

The appellant State of Gujarat in this appeal filed under Section 378 of the Code of Criminal Procedure (to be referred to as "the Code") has challenged the judgment and order dated March 11, 1991 of the learned Chief Judicial Magistrate, Bharuch, in Summary Case No. 62145/90 wherein the respondent came to be acquitted for the offences punishable under Section 66(1)(b) and under Section 85(1)(3) of Bombay Prohibition Act, 1949 (to be referred to as "the Act").

2. On September 6, 1990, Police Sub-Inspector P.P. Kanani, P.I. Y.M. Chudasma, PSI T.M. Goswami and other police personnel were present around 13.35 hrs. at the Bharuch police station. At that relevant time,Guard Commander, Namdev Baburao entered the Chamber of P.I. Mr. Chudasma and informed that the respondent who had come to take the possession of rifle was in a drunken state and therefore he had not issued rifle and cartridges to him. On receiving this information P.I. Chudasma, PSI Kanani, and PSI Goswami rushed to the chamber and found the respondent in a drunken state of mind. Two independent panchas were called and in their presence the physical condition of the respondent was noted. It was found by the panchas that the respondent was in a drunken state and his gait was unstable and his pupils were dialated and foul smell of liquor was coming out from his mouth. In the presence of the panchas, PSI Kanani asked the respondent whether he was possessing any pass or permit or licence to consume alcohol. A detailed Panchnama of the proceeding was drawn between 13.40 hrs. to 14.10 hrs. The respondent was arrested for the offences punishable under Section 66(1)(b) and 85(1)(3) of the Act.

3. After his arrest, the respondent was sent to Bharuch Civil Hospital for medical examination. PW 1 Dr. Pramodbhai Chunilal Patel who was at the relevant time discharging his duties as Medical Officer in the Civil Hospital at Bharuch took the sample of blood from the right hand for finding out the percentage of alcohol. The said blood sample was collected in a phial and sent to Chemical Analyser. As per the report of the Chemical Analyser the percentage of alcohol was more then the minimum prescribed under the Rules framed under the Bombay Prohibition Act and therefore chargesheet came to be filed against the respondent for the above offences in the Court of Chief Judicial Magistrate (F.C.), Bharuch, which came to be numbered as `Summary Case No. 62145/90.

4. Plea of the respondent was recorded wherein he pleaded not guilty and claimed to be tried. In order to prove the charges against the respondent, the prosecution examined following witnesses :

1. P.W. 1 Dr. P.C. Patel
2. P.W. 2 PSI - Shardaben C. Patel
3. P.W. 3 Panch - Abdulbhai Alibhai
4. P.W. 4 Panch - Haresh Ambalal
5. P.W. 5 PSI - T.M. Goswami
6. P.W. 6 Police Constable Namdev Baburao

7. P.W. 7 Complainant - PSI Kanani
8. P.W. 8 P.I. Y.M. Chudasma
9. P.W. 9 Madhavsinh Raisinh
10. P.W. 10 Police Head Constable Sitaram Arjunbhai.

The prosecution produced documentary evidence such as complaint, report of Chemical Analyser, Panchnama of the physical condition of the respondent etc., to prove the charge against the respondent.

5. On completion of the evidence of the prosecution, statement of the respondent under Section 313 of the Code was recorded wherein the respondent stated that on the day of the incident, i.e. on September 6, 1990 he was on duty at Kasak since morning hours. He has stated that after his return to police station, P.I. Chudasma had teased him and there was verbal exchange between him and P.I. Chudasma. That when he tried to lodge complaint against P.I. Chudasma he was falsely involved in this case.

6. The learned Chief Judicial Magistrate, after appreciating oral as well as documentary evidence led by the prosecution, came to the conclusion that the presence of the respondent at the police station was not proved beyond doubt and Dr. P.C. Patel had not followed mandatory requirement of Rule 4 of Bombay Prohibition (Medical Examination & Blood Test) Gujarat Amendment Rules, 1985. In view of the above referred two conclusions, the learned Chief Judicial Magistrate by the impugned order acquitted the respondent of the charges framed against him which has given rise to file this appeal by the State of Gujarat.

7. Learned APP, Mr. K.P. Raval has taken me through the entire record & proceedings of the Criminal Case No. 62145/90. Learned APP has submitted that the respondent was found in a drunken condition at the police station. This aspect was amply proved by the evidence of Police Officers examined in this case. Learned APP further submitted that PW 1 Dr. P.C. Patel had followed the procedure prescribed under Rule 4 of the Bombay Prohibition (Medical Examination & Blood Test) Gujarat Amendment Rules, 1985, and therefore learned trial Magistrate had erred in holding that the mandatory provisions of Rule 4 were not followed. Learned APP further submitted that the learned trial Magistrate had not properly appreciated the evidence of P.W.1 of Dr. Patel and had wrongly acquitted the respondent. Learned APP further submitted that as per the report of the

Chemical Analyser the percentage of alcohol in the blood of the respondent was more than the minimum prescribed under the Act and the Rules and therefore the impugned judgment be quashed and set aside, the appeal be allowed and the respondent be directed to undergo the sentence for having committed the offences for which he was charged. The evidence of Dr. P.C. Patel does not indicate that before taking the blood sample from the right hand of the respondent he had cleaned that part with aqueous solution of mercurochrome or geetian violet not containing alcohol or its solution. The evidence of Dr. Patel also does not indicate that before treating the blood sample in the phial he had personally sterilized the syringe and the phial in a boiling water. In the cross-examination, he had admitted that before taking sample from the portion of the right hand of the respondent he had not cleaned it with the solution of aqueous mercurochrome or geetian violet not containing alcohol or its solution. Thus, it becomes abundantly clear that Dr. Patel had not followed the mandatory requirement of Rule 4 of the Bombay Prohibition (Medical Examination & Blood Test) Gujarat Amendment Rules, 1985. The Full Bench of this Court in the case reported in 1984 G.L.H. Page 438 has held, that requirement of Rule 4 is a mandatory and if any breach is committed in taking sample of the blood and if the requirement under Rule 4 is not followed, then the conviction is liable to be set aside.

8. Same principle is reiterated in Kalidas Dhulabhai Vaghela vs. State - 1996 (2) G.L.R. Page 372. In view of this settled legal principle, and as mandatory procedure as prescribed under Rule 4 for collecting the blood sample was not followed, the learned Chief Judicial Magistrate had not committed any error in acquitting the respondent for the charges framed against him. If the mandatory procedure as prescribed under Rule 4 was not followed, then the report of the Chemical Analyser loses its value and has to be discarded.

9. The learned trial Magistrate has also found that the evidence of prosecution witnesses was also not reliable and the presence of the respondent at the police station was also doubtful. It is further held by the learned trial Magistrate that the respondent on the day of the incident had not taken rifle or cartridges and therefore the entry made in the register was fabricated. The panch witnesses had also not supported the prosecution that the respondent was found in a drunken state and his gait was not proper and his pupils were dialated. The panchnama which was drawn of the physical

condition of the respondent was also not proved. On overall appreciation of the prosecution witnesses, it seems to me that a false case was cooked up against the respondent as he had some verbal altercation as PSI Chudasma had teased him at the police station. The learned Magistrate had not committed any error in appreciating the evidence of the prosecution witness, and I am in general agreement with the reasoning and conclusion recorded by the learned Magistrate and therefore I do not deem it fit to reiterate the same reasoning in this judgment so as to burden it.

10. This is an acquittal appeal in which the Court would be slow to interfere with the order of acquittal. Infirmities in the prosecution case go to the root of the matter and strike a vital blow on the prosecution case. In such a case, it would not be safe to interfere with the order of acquittal more particularly when the evidence has not inspired confidence of learned Chief Judicial Magistrate, who had an advantage of observing demeanour of witness. On overall appreciation of evidence, I am satisfied that there is no infirmity in the reasons assigned by learned Chief Judicial Magistrate for acquitting the respondents. Suffice it to say that learned Chief Judicial Magistrate has given cogent and convincing reasons for acquitting the respondents and learned Additional Public Prosecutor has failed to dislodge the reasons given by learned Chief Judicial Magistrate in order to convince us to take the view contrary to the one already taken by the Chief Judicial Magistrate's Court. Therefore, the acquittal appeal deserves to be dismissed.

11. Hence, this appeal is dismissed.

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